

MT LEGISLATIVE HISTORY

Chapter 358 1971

Bill H (S) 88

Original bill & hist. C

H. Committee on Ways & Means

S. Committee on Taxation

Hearing Date(s) FEB 16 ✓ C

Hearing Date(s) JAN 16 ✓ C

FEB 19 ✓ C

JAN 21 ✓ C

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JAN 23 ✓ C

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Did this bill originate in an interim committee? Yes No

Committee

Report

January 16, 1971

A meeting of the Committee on Taxation held in Room 440 of the State Capitol was called to order by Chairman Nees at 8:15 on the above date. Roll call was taken and a quorum was present.

The possibility of joint meetings with the House Ways & Means Committee was discussed as a possibility to save time.

SENATE BILL 36: Explained by Senator Rosell and Mr. Durkee. Exhibits attached were passed out. Seven visitors in support of the bill were present. Senator Rosell & visitors were excused.

Verne Miller spoke on the effect this bill would have on the taxes in the State. He said that about \$2 per mill of state levy on each home would be of small effect to the State.

Senator McKeon and Hanks were appointed as a subcommittee to study this bill and report back Thursday.

SENATE BILL 87, explained by Senator Thiessen. A fiscal note for the bill was requested, and any delay caused by this was okayed by Senator Thiessen. No action taken, More time needed.

SENATE BILL 88: Explained by Senator Mather who felt that the SENATE BILL 89 should be discussed along with it. Mr. Vostad explained the need for this bill was to clear up a possibility of suits being filed against the states for losses having been incurred before mergers, etc.

Senator Nees proposed placing those two bills in sub committee, and appointed Senator Gilfeather and Senator Mathers as the committee to report back Thursday. A need for clarification as to the wishes of the committee as to allow or disallow net operation losses was requested in a motion by Senator Gilfeather. A roll call vote resulted in a tie, Senator Manning having been excused for another meeting.

Senator Nees requested additional time on all bills. No action was taken today.



Senator Nees, Chairman

January 21, 1971

The committee on taxation met at 8:10 in room 442. Roll call was taken with a quorum present, and the reading of the minutes was dispensed with.

SENATE BILL 36: A motion by Senator McKeon, seconded by Senator Turnage that Senate Bill 36 await the new bill Senator Rosell has coming in. Voted, passed.

SENATE BILL 87: A motion by Senator Mathers, seconded by Senator Lyon to hold this bill back. Voted. Passed.

SENATE BILL 88: Senator Mathers presented an amendment to this bill and moved its adoption. Seconded by Senator McKeon, voted and passed. Motion by Senator Turnage seconded by Senator Mathers that a fiscal note be requested.

SENATE BILL 89: Motion by Senator McKeon, seconded by Senator Mathers to hold Senate bill 89 for further consideration. voted & passed.

SENATE BILL 131: Senator Lynch stated this bill had been prepared by the Department of Planning and Economic Development and read the proposed changes. 18 visitors registered, 12 in support, 5 opposed, and one for amending.

Proponent speakers included Bill Spelker, dept of Planning and Economic Development; Senator Bollinger, Representative Knudson; Del Siewert, Robert Holding of the Montana Taxpayers Association, Don Jones and Mr. Peterson from the Billings Chamber of Commerce, Gary Weisbron, Bonanza Packing Co.; Ben Havdahl, Petroleum Industry, and Lou Brown, Anaconda Co. They stated general support, Lou Brown requested a change in the amendment, and Gary Weisbron was requested to give information to the committee by Monday on tax relief his Co. had received from other states.

Because of shortage of time further proponents from out of town were requested to re-appear Saturday if they wished to testify. Out of town OPPONENT, Bill ~~0854~~ ⁸⁹⁵⁴, Yellowstone County Tax Assessor, spoke, and Ben Wake, Director of Air Polution Control with the State Board of Health stated he felt the discrepancy between the words "compliance" page 5, subsection b and "reduce" page 6 could be a trap.

Moved by Senator Mather, seconded by Senator Turnage that the meeting adjourn and the rest of the witnesses appear on Saturday. Voted and passed.



Senator Nees, Chairman

January 23, 1971

The committee on Taxation met in room 442 on the above date, roll call was taken, and a quorum present. In the absence of Senator Nees, Senator McKeon presided.

Vern Miller, State board of Equalization presented a fiscal statement, included as exhibit A, on SB 88.

SB 210 and 211 were still in printing, but the originals were read and discussion held. Witness Tom Stoll from the inheritance tax department spoke on the changes.

SB131 was continued with witnesses opposing the bill. Howard Lord, Chairman of the State Board of Equalization read a prepared statement a copy of which is attached as Exhibit B. John Alley and Morley Cooper, also from the board of equalization concurred in and enlarged upon Mr. Lord's statement.

REBUTTAL: Senator Lynch read a written statement from the Bonanza Packing Co., which is enclosed as exhibit "c". Mr. R. McConnen from the Montana State University, an economist, and Rep. Knutson also spoke in rebuttal. Questions were asked of the witnesses, and they were excused.

A motion by Senator Gilfeather, seconded by Senator Rostad that further consideration to S.B. 131 be postponed indefinitely. Voted, passed.

SB 210: Motion by Senator Lyon, seconded by Senator McGowan that Senate Bill 210 DO PASS. Voted, passed.

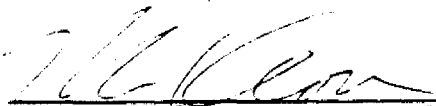
SB 211: Motion by Senator Lyon, seconded by Senator McGowan that Senate Bill 211 DO PASS. Voted, passed.

SB 263: Motion by Senator Gilfeather, seconded by Broeder that Senate Bill 263 be amended by putting them (pp 6, line 25 of the original bill) into the 7%, striking the provision of 1% which would be the new class 9 by changing and providing the class be in class 7. Voted, passed. Motion by Senator Gilfeather, seconded by Senator Rostad that Senate Bill 263 DO PASS AS AMENDED. Voted, passed.

SB 88: Motion by Senator Gilfeather to pass the amendment to SB88, Seconded by Senator Mathers, voted, passed. Motion by Senator Gilfeather that Senate Bill 88 DO PASS AS AMENDED.

SB 89: Motion by Senator Mather, seconded by Senator Gilfeather that Senate Bill 89 DO NOT PASS. Voted, Passed.

A request was made to prepare the action taken, but to hold it until bills and reports are on the desks, and Senator Nees is back.



Senator McKeon
Acting Chairman

February 16, 1971

WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Walter Ulmer at 9:00 a.m. Roll call showed all members present.

Rep. Robbins, principal sponsor of HR 6, spoke very briefly regarding this bill, which requests the legislative council to conduct a study of the need and feasibility of deriving revenue from all tax-exempt property to provide funding for fire and police protection.

Dan Mizner, representing the Montana League of Cities and Towns, then spoke as a proponent asking support of the committee in this resolution.

There being no opponents, a very brief question and answer period followed, regarding mainly church and state-owned property.

Sen. Goodheart was next to testify on SB 14, which relates to the procedure for refunds of gasoline license tax. This bill was introduced because of the pressure from farmers and ranchers regarding the gasoline refund. They have now come up with a new form which was discussed and is attached, forming a part of these minutes. Also discussed was the amendment which was put into this bill by the Senate.

Sen. Jack McDonald testified as a proponent to this bill and presented further amendments for the committee's consideration. He also pointed out to the committee that the General Fund does not get this money, it goes to the Highway Department.

Rep. Cecil Weeding then spoke briefly regarding mainly the type of vehicles that never use the public highways except for possible repairs in a garage and therefore have to be licensed, but should receive a gasoline refund. He urged the committee's concurrence in SB 14.

Clyde Jarvis, representing the Montana Farmers Union testified as a proponent and his prepared testimony is attached and forms a part of these minutes.

The only opponent was Robert Wilson of the State Board of Equalization who stated they were not opposed to the bill before the amendments had been put in, however, as the bill now read with the proposed amendments, anyone could apply for a gasoline refund. He also discussed the cost, a copy of which is attached and forms a part of these minutes.

A brief question and answer period followed, regarding mainly the loss of revenue, which would amount to about \$500,000.

The last bill to be heard this morning was SB 88, Sen. Mathers being principal sponsor. He stated in the last year some corporations have

decided to file for a net operating loss, which they have never been able to do in the past. This bill would prevent this.

Howard Vralstad, State Board of Equalization, spoke briefly regarding the confusion the present law has presented.

Before the witnesses were excused, a brief discussion regarding mainly the fiscal note followed.

The first bill to be acted on by the committee was HR 6. Rep. Lockwood moved HR 6 be adopted. This was passed unanimously.

Rep. Murphy moved SB 14 be concurred in. A substitute motion was made by Rep. Giesick that SB 14 be concurred in as amended. A hand vote was taken and passed. The standing committee report is attached.

Rep. Healy then moved HB 367 DO PASS. This bill regards reducing the mining of phosphates to class 4. There was a brief discussion before Rep. Giesick made a substitute motion that HB 367 DO NOT PASS. A hand vote was taken and carried.

There being no further business the meeting adjourned at 10:30 a.m.


WALTER J. ULMER
Chairman

February 19, 1971

WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Walter J. Ulmer at 9:00 a.m. Roll call showed twelve members present. (Absent Lundgren, Fasbender, Yardley)

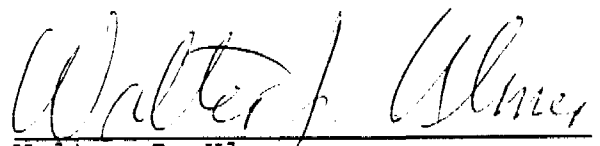
The Chairman announced there would be a hearing Monday morning at 9:00 a.m. on SB 14. This bill had been returned to the committee because of some problems concerning the amendments.

This is to be an executive session and the first bill to be taken up is HB 158. Rep. Falkenstern moved HB 158 be reported out of committee DO NOT PASS. A substitute motion was then made by Rep. Watt that HB 158 DO PASS. This motion failed, and a hand vote was then taken on the first motion, which was carried.

The next bill to be acted upon by the committee was SB 88, which provides for a net operating loss deduction in computing net income for corporation license tax purposes and to delete the deduction in subsection (6) relating to insurance companies. Howard Vralstad of the State Board of Equalization was asked to attend the meeting and explain his agency's opinion of this bill. Background information was handed out to the committee which had been prepared by the State Board of Equalization, and this was discussed at some length. Several amendments were mentioned by committee members and Rep. Giesick moved to amend the title providing an effective date. This was voted on and passed. He then moved that SB 88 BE CONCURRED IN AS AMENDED. Following the motion, discussion followed and rather lengthy amendments were proposed. A substitute motion was then made by Rep. Keller that the bill BE CONCURRED IN AS AMENDED. A vote was taken and this was carried. Due to the length of the amendments a copy of the Standing Committee Report is attached and forms a part of these minutes.

The last bill to be acted upon today was SB 179, which had been studied and amended by the subcommittee. Rep. Swanberg reported for this subcommittee. Rep. Watt then moved SB 179 BE CONCURRED IN AS AMENDED. This motion was carried. A copy of the Standing Committee Report is attached, and forms a part of these minutes.

There being no further business the meeting was adjourned.


Walter J. Ulmer,
Chairman

MEMORANDUM

December 7, 1970

TO: Howard H. Lord, Chairman
State Board of Equalization

FROM: Howard O. Vralsted, Director,
Income and Corporation License Tax Department

RE: Possible Large Loss in Corporation License Tax Revenue.

Section 84-1504, R.C.M. 1947, of the Corporation License Tax Law defines "net income" (the measure of the tax) as "gross income less the allowable deductions." The deductions allowed from gross income in determining net income are specified in Section 84-1502, R.C.M. 1947. Prior to 1961, the law did not define the term "gross income" and, consequently, questions did arise as to what constituted gross income.

During the 1961 legislative session, a bill (Chapter 235, Laws of 1961) was introduced to amend Section 84-1504, R.C.M. 1947, by defining gross income in terms of the corporation's Federal Income Tax gross income. The Board of Equalization did not favor the bill because it obviously would reduce revenue by an indeterminable amount, and we believed it would result in considerable litigation. The bill, at least initially, was also strenuously opposed by cooperatives, acting through their attorney Mr. Hugh Massman. As finally amended and enacted into law, the bill defined gross income as "the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability, but shall include interest exempt from federal income tax." The bill further provided "the definitions of gross income and net income set forth in this section shall not be construed as allowing the deductions set forth in section 243 of the federal internal revenue code ***." Quite probably this latter provision was added as the result of the Board of Equalization's expressed opinion that although the deduction provided for under Section 243 of the Internal Revenue Code was specifically allowed as a deduction from gross income in determining taxable income (and presumably, therefore, not properly deducted in determining Montana gross income), the Federal return form provided for offsetting the dividend deduction against dividend income in the determination of "total income" as shown on the return. Thus, corporations might attempt to claim the deduction as being applicable in determining Montana gross income, which would seriously reduce revenue if the argument prevailed.

We know from working with the committees that considered the bill, and from the explanations as to its effect and purpose, that the intention of the legislature was to define Montana gross

income in terms of Federal gross income and that Montana taxable income would be such gross income less those deductions specified in Section 84-1502, R.C.M. 1947, and we so administered the law. However, shortly after the enactment of Chapter 235, Laws of 1961, the Montana Supreme Court in the case of Home Building & Loan Assn. of Helena v. Fulton, 141 Mont. 113, allowed building and loan associations to deduct dividends paid on depositors' accounts, apparently on the basis of the conclusion that the changes made by Chapter 235, Laws of 1961 had the effect of not only adopting the Federal definition of gross income but also all deductions allowed in determining Federal taxable income. This decision was premised on the court's previous decision in the case of Fulton v. Farmers Union Grain Terminal Association, 140 Mont. 523, in which the court allowed cooperatives to exclude patronage dividends in determining gross income. We think the Court was correct in allowing the exclusion for patronage dividends, and we think it was correct in allowing building and loan associations to deduct dividends on depositors' accounts by reason of the provisions of Section 84-1502, R.C.M. 1947--not by reason of having adopted all deductions allowed for Federal income tax purposes as decided by the Court.

Regardless of the rules to be followed in determining legislative intent, it is difficult for us to understand how the Supreme Court could have so glibly reached its conclusion that we had adopted all Federal deductions, in view of the fact that the legislature surely would have repealed Section 84-1502 if it had wanted to adopt the Federal deductions, and also in view of the purpose of Chapter 235, Laws of 1961, as stated in its title. In any event, we have each legislative session prepared bills to amend Section 84-1504 to unambiguously state the obvious and orally stated legislative intent. Unfortunately, our bills were not introduced, failed to get out of committee, or failed to carry both houses. We are convinced that the failures resulted from the fact that few people appreciated the effect of the Supreme Court decisions and of the need for corrective action. Now, however, the effect of the decisions is about to become readily apparent to everyone.

A corporation has filed a legal action to establish its right to deduct net operating loss carryovers and carrybacks in determining Corporation License Tax net income based upon the Montana Supreme Court decisions in the above-cited cases. We are greatly concerned that the taxpayer's arguments will prevail. We could be overly concerned about the impact of these cases, but if we are correct the effect on revenue will be catastrophic. We are reliably informed that tax practitioners have been alerted and will immediately begin filing claims for refunds the moment they have any basis for proceeding. Should it be determined that net operating losses may be carried back and forward to offset net income of other years, there will be an initial potential revenue loss of at least \$1,500,000, and a subsequent annual revenue reduction conservatively estimated at not less than \$500,000. The initial revenue loss can be expected to fall within the fiscal year beginning July 1, 1971.

Accordingly, we urgently request that the Board of Equalization and its legal counsel consider this matter as soon as possible in order that we may plan a course of action. If the Board and its legal counsel agree that our conclusions are well-founded, we can suggest only one practical way to attempt to preclude the disastrous revenue loss, and that is to request the 1971 Legislature to promptly enact a declaration of legislative intent with respect to the definition of gross income and net income found in Section 84-1504, R.C.M. 1947, such as that set forth below:

85-1546 It is hereby declared that the Legislative Assembly of the State of Montana has enacted Chapter 235, Laws of 1961, for the sole purpose of establishing a definition of the term "gross income," against which only those items referred to in section 84-1502, R.C.M. 1947, are deductible therefrom in determining taxable income; that deductions permitted in the Internal Revenue Code are not deductible against "gross income" as defined by Chapter 235, Laws of 1961, except to the extent permitted in section 84-1502, R.C.M. 1947; and that said gross income consists of all income derived from or attributable to sources within Montana to the extent recognized in the determination of gross income as defined in the Internal Revenue Code in effect for the taxable period, and also includes interest income exempt from Federal income tax.

85-1546
84-1502
84-1502
84-1502



STATE OF MONTANA

BOARD OF EQUALIZATION

STATE CAPITOL BUILDING

HELENA, MONTANA

January 19, 1971

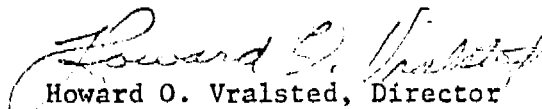
MEMO: Senator Turnage

Section 172 of the Internal Revenue Code allows to both individuals and corporations a net operating loss deduction in determining taxable income for Federal Income Tax purposes. Both individuals and corporations are permitted to carry a net operating loss back three years preceding the loss year and carried forward five years succeeding the loss year.

The Montana individual income tax law incorporates by reference under Sections 84-4905 and 84-4906, R.C.M., 1947, the net operating loss deduction provided for under Section 172 of the Internal Revenue Code. Accordingly, individuals subject to the Montana income tax law are allowed the net operating loss deduction. Such losses may be carried back three years preceding the loss year and carried forward five years succeeding the loss year.

It is the position of the Board of Equalization that a net operating loss deduction is not allowed to corporations under the existing provisions of the Montana Corporation License Tax Law, by reason of the fact that Section 84-1502, R.C.M., 1947, which specifies the deductions allowed, does not refer to a net operating loss deduction. It is a well settled point of tax law that deductions are matters of legislative grace, and only as there is clear provision therefor can any particular deduction be allowed.

STATE BOARD OF EQUALIZATION

A handwritten signature in cursive script, reading "Howard O. Vralsted".

Howard O. Vralsted, Director
Income and Corporation License Tax Department

Effective
immediately.

Section 3. This act shall be effective upon passage and approval.

Approved March 15, 1971.

CHAPTER NO. 358.

An Act Amending Section 84-1502, R.C.M., 1947, to Provide for a Net Operating Loss Deduction in Computing Net Income for Corporation License Tax Purposes, and to Delete the Deduction in Subsection (6) Relating to Insurance Companies which Deduction Has no Application to the Law.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 84-1502, R.C.M., 1947, is amended to read as follows:

Deductions allowed
corporations—
computation of
net income.

"84-1502. **Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources: (1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

Limitation.

Losses.

Depreciation.

Exclusions.

(2) (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of

any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) *There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term 'net operating loss' means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.*

Net operating loss
deduction—
determination.

'Net operating loss'
defined.

Carryback.

Determination.

Computation.

(b) *The modifications referred to in paragraph (a) of this subsection shall be as follows:*

Modifications.

(i) *No net operating loss deduction shall be allowed.*

(ii) *The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.*

(c) *A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.*

Loss limited to
business in
Montana.

(d) *In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss*

In case of merger.

deduction for net operating losses sustained by the merged corporations prior to the date of merger.

Consolidation. *In the case of consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidation.*

Interest not paid. *(c) Notwithstanding the provisions of section 84-1508-1 (c), R.C.M., 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.*

Taxable periods. *(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.*

Depletion allowance—mines, oil and gas, timber. *3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the state board of equalization; provided, however, for the purpose of determining depletion, depreciation and obsolescence, in all cases not expressly provided for in this act, the provisions of the most recent act of Congress of the United States, commonly known as the Federal Income Tax Act, and the rules, regulations and decisions thereunder, in so far as the same are applicable and pertinent and not repugnant to or inconsistent with the express provisions of this act, shall be the rule of decision by the state board of equalization.*

Determination.

Federal act—rule of decision.

Interest paid.

4. The amount of interest paid within the years on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purpose, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

Taxes paid—exceptions.

5. Taxes paid within the year except the following:
(a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

Section 2. This act is effective upon its passage and approval. Effective immediately.

Approved March 15, 1971.

CHAPTER NO. 359.

An Act to Amend Section 92-706, R.C.M., 1947, so as to Delete the Five Thousand Dollars Limitation in Payment of Medical Benefits; Delete References to Hospital Contracts; and Provide for Stabilization of Hospital Fees and Charges.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-706, R.C.M., 1947, is hereby amended to read as follows: Amending clause.

"92-706. Medical and hospital services and such other treatment as approved by the board to be furnished. In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished: Additional benefits.

During the first thirty-six (36) months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the board. During 36 months after injury—medical and hospital treatment furnished.

The employer or insurer or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished.

And be it further provided, that where an injury arising out of and received in the course of employment necessarily results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the industrial accident Artificial members furnished.